
FEDERAL ENERGY REGULATORY COMMISSION



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NEWS RELEASE

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COMMISSION SEEKS COMMENT ON PROPOSED REPEAL OF MARKET BEHAVIOR RULES

The Federal Energy Regulatory Commission is seeking comment on whether to repeal the Market Behavior Rules it adopted two years ago to prohibit market manipulation, given that the recently enacted Energy Policy Act of 2005 provided the Commission with enhanced authority to police against market manipulation.

The Commission in November 2003, pursuant to section 206 of the Federal Power Act and section 7 of the Natural Gas Act, amended all market-based rate tariffs and authorizations for wholesale power, and all blanket certificate and pipeline sales for natural gas, to require energy sellers to adhere to strict rules governing conduct by energy market participants.

The Energy Policy Act, signed into law August 8, 2005, established a new section 222 of the Federal Power Act, and a new section 4A of the Natural Gas Act, providing the Commission with authority to prohibit any entity from using or employing "any manipulative or deceptive device or contrivance" in connection with the purchase or sale of wholesale electricity or natural gas, and jurisdictional transmission or transportation services for electricity or natural gas.

Last month, the Commission issued a notice of proposed rulemaking to implement this new Energy Policy Act authority, noting it will simplify the Commission's rules regarding market manipulation, and provide greater clarity and regulatory certainty for the industry (Docket Nos. RM06-2, RM06-3 and PL06-1).

"There are significant differences between the anti-manipulation rules proposed last month and the anti-manipulation provisions of the Market Behavior Rules. The new rules are broader in scope, applying to all wholesale power sellers and all wholesale transactions, and the intent standard is different. For these reasons, it makes sense to give serious thought to repealing the Market Behavior Rules. Having two sets of rules barring

the same behavior does not offer more protection to consumers,” commented Commission Chairman Joseph T. Kelliher.

In two companion actions today, the Commission specifically seeks comment on whether to repeal the Market Behavior Rules, including Market Behavior Rule 2, which prohibits “actions or transactions that are without a legitimate business purpose and that are intended to or foreseeably could manipulate market prices, market conditions, or market rules” for electricity and natural gas.

There is a different standard of proof required under the Commission’s Market Behavior Rules and the approach embodied in the Commission’s proposal to implement its new Energy Policy Act anti-manipulation authority.

As directed by Congress, the Commission has proposed to adopt the “scienter” standard of proof embodied in section 10(b) of the Securities Exchange Act of 1934, which requires a showing of intent to deceive, defraud or manipulate. Under Market Behavior Rule 2, the Commission required a showing that the actions or transactions “foreseeably” could manipulate market prices, conditions or rules.

There is also a difference in the scope of applicability. The Energy Policy Act provides the Commission with authority to police market manipulation by “any entity,” including municipally owned utilities and others not typically subject to Commission jurisdiction, while Market Behavior Rule 2 applies only to public utilities with market-based rate and blanket certificate authorities.

The Commission also considered each of the other Market Behavior Rules and seeks comment on whether the requirements they impose are either duplicative of other rules or regulations, or can be incorporated into other rules of general applicability.

“We think that repeal of the Market Behavior Rules will simplify the Commission’s rules and regulations, avoid confusion, and provide greater clarity and regulatory certainty to the industry,” the Commission said in the two companion orders adopted today, emphasizing its belief that “repeal of the Market Behavior Rules is intended to take into account the passage of the [Energy Policy Act of 2005], which has provided the Commission with expanded anti-manipulation authority, and to simplify and streamline the rules and regulations sellers must follow, not to eliminate beneficial rules governing market behavior.”

Comments on the two companion orders are due 30 days after publication in the Federal Register (www.gpoaccess.gov), and reply comments are due 15 days after that date.